

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.W. NO. 1584/2018
IN
WRIT PETITION NO. 4672/2017

Swargiya Indira Gandhi Swayam Rojgar Sanghatana & ors.

..VS..

Municipal Council & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B. Gandhi, Advocate for the petitioner(s)
Shri K.S. Malokar, Advocate for the respondent no. 2
Ms. T.H. Khan, AGP for the respondent/State

CORAM : Z.A.HAQ, J.
DATED : 05/07/2019

By this application, the petitioners – original plaintiffs seek to raise a new plea that the petitioner nos. 2 to 93 will fall under the category of “street vendor” as defined under Section 2 (1) (l) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. It is submitted that this plea is not raised in the plaint which is filed in 2008 as the Act of 2014 was not in existence then.

Considering the nature of plea raised by the petitioners and the facts of the case, the petitioners are permitted to amend the petition to incorporate the proposed amendment.

The civil application is **allowed** accordingly.

WRIT PETITION NO. 4672/2017

The petitioners have filed the civil suit praying for decree for declaration that the notices issued by the Municipal Council are illegal, in violation of principles of natural justice and the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and the rules framed under it. The petitioners – plaintiffs have prayed for decree for injunction restraining the defendants in the civil suit from taking any action pursuant to the notices dated 29/01/2008. The learned trial Judge rejected the application filed by the plaintiffs praying for temporary injunction. The appeal filed by the plaintiffs under Order 43 Rule 1 (r) of the Code of Civil Procedure is also dismissed. In this petition, the order passed by the trial Court and the judgment passed by the District Court are challenged.

While issuing notice, by the order dated 20/07/2017, this Court directed the parties to maintain status-quo. After 20/07/2017, the petition is listed today. The respondents have not been able to point out that why the petition is not circulated earlier and why request is not made to vacate the interim order. Since last 11 years, the respondents have not been able to remove the petitioners – plaintiffs. The record suggests that the respondents are colluding with the petitioners and the process of Court is being abused.

Be that as it may, considering the fact that the petitioners – plaintiffs are conducting their business under the protection of interim order granted by this Court in July 2017, the following order is passed:-

- a) The trial Court is directed to decide the civil suit till 30/03/2020.
- b) Interim order granted by this Court on 20/07/2017 shall continue till 30/03/2020.
- c) The Collector, Akola shall ensure that the respondent nos. 1 and 2 prosecute the matter diligently and there is no willful default on their part in attending the proceedings.

The petitioners – plaintiffs undertake to co-operate for time bound disposal of the civil suit.

- d) If the civil suit is not decided till 30/03/2020, the petitioners will be at liberty to move fresh application for continuation of the interim order.

The learned trial Judge shall pass appropriate orders on such application keeping in view the conduct of the party which commits default and fails to co-operate for time bound disposal of the civil suit.

The writ petition is **disposed** in the above terms. In the circumstances, the parties to bear their own costs.

The learned AGP shall communicate this order to the respondent no. 3 – Collector.

JUDGE